

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**FOUR SEASONS NURSING CENTER,  
a Michigan corporation,**

**Plaintiff(s),**

**CASE NUMBER: 04-74614  
HONORABLE VICTORIA A. ROBERTS**

**v.**

**WEBER MEDICAL SYSTEMS, LLC, a  
Delaware corporation, d/b/a OMNICARE  
RENAL SERVICES, OMNICARE, INC., a  
Delaware corporation, WESTHAVEN  
SERVICES CO., an Omnicare Company,**

**Defendant(s).**

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**ORDER GRANTING DEFENDANTS'  
MOTION FOR RECONSIDERATION**

Eastern District of Michigan Local Rule 7.1(g)(3) provides for reconsideration if the movant demonstrates a palpable defect by which the court and the parties have been misled, and further demonstrates that correcting the defect will result in a different disposition of the case. Defendants Omnicare, Inc., Weber Medical Systems, LLC (d/b/a Omnicare Renal Services) and Westhaven Services Co. (collectively "Omnicare") request that the Court reconsider its ruling on their Motion to Dismiss Plaintiff's promissory estoppel claim (Count III).

The Court found that the statute of frauds, M.C.L. §566.132(g), barred Plaintiff's breach of contract claim because it was based on an alleged oral promise related to medical care or treatment. See Opinion and Order Denying in Part and Granting in Part, Defendants' Motion to Dismiss at p. 6. The Court denied Defendants' motion to dismiss

the promissory estoppel claim. *Id* at pp. 8-9. However, Defendants contend that the promissory estoppel claim is also barred by the statute of frauds, because it is based on the same alleged oral promise that is the basis of Plaintiff's breach of contract claim. Defendants are correct.

In both *Powers v Peoples Community Hospital Authority*, 83 Mich. App. 550, 554 (1990) and *Malik v William Beaumont Hospital*, 168 Mich. App. 159, 172-173 (1988), the Michigan Court of Appeals found that promissory estoppel claims based on oral promises relative to medical care or treatment were barred by the statute of frauds. Therefore, for the reasons stated with regard to Plaintiff's breach of contract claim, Plaintiff's promissory estoppel claim is also barred by the statute of frauds and is dismissed.

**IT IS SO ORDERED.**

s/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: October 19, 2005

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on October 19, 2005.

s/Linda Vertriest

Deputy Clerk